

REMARKS

Information Disclosure Statement

An Information Disclosure Statement (IDS) was filed on October 28, 2002. The Examiner states that the IDS fails to comply with 37 C.F.R. § 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent and publication. Applicants enclose herewith a copy of the Postcard Receipt for the IDS, which indicates that copies of all references included on the PTO-1449 forms were enclosed with the IDS and were received by the U.S.P.T.O. Applicants are also enclosing herewith copies of the non-U.S. patent references (References AL-AW, AM2-AQ2 and AL3-AO3), as requested by the Examiner. Because these references were previously received by the U.S.P.T.O., it is assumed that no fee is required in order to permit entry and consideration of the non-U.S. patent references.

Claim Amendments

Claims 1-35, 51-58, 61-64 and 72-74 have been canceled.

Claims 75 and 76 have been added. Support for the new claims can be found at page 3, lines 19-20 and page 10, line 10 through page 11, line 3. No new matter has been added.

Applicants note that the pharmaceutical composition of Claim 75 comprises the polymer of Claim 36. Claim 76 depends from Claim 75. Therefore, Applicants respectfully request that Claims 75 and 76 be entered and examined along with Claims 36-50.

Provisional Rejection of Claims 36-41 Under Obviousness-Type Double Patenting

Claims 36-41 are provisionally rejected under obviousness-type double patenting over Claims 1-5, 10 and 20-24 of co-pending U.S. Application No. 10/051,766 (hereinafter referred to as "the '766 Application"). The Examiner states that the claims are not patentably distinct because the compositions used to treat mucositis in the '766 Application comprise polymers claimed in the instant application.

Applicants respectfully traverse the rejection. A product and process of using the product are properly considered to be patentably distinct inventions. MPEP § 806.05(h) states:

A product and a process of using the product can be shown to be distinct inventions if either or both of the following can be shown: (A) the process of

using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process.

In the present case, the '766 Application discloses at page 2, lines 28-29 that chlorhexidine mouthwash is used extensively in the treatment and prevention of oral mucositis. Thus, the process of using can be practiced with another materially different product than ionene polymers, namely chlorhexidine mouthwash. Chlorhexidine is a small molecule and is clearly different from an ionene polymer. Thus, instant Claims 36-41 and the cited claims of the '766 Application are properly considered to be patentably distinct. Accordingly, the instantly claimed subject matter is not obvious in view of Claims 1-5, 10 and 20-24 of the '766 Application. Reconsideration and withdrawal of the provisional rejection are respectfully requested.

Objection to Claims 42-50

In view of the above arguments, Applicants maintain that the base claims are patentable. Thus, there is no need to rewrite Claims 42-50 as independent claims. Withdrawal of the objection is respectfully requested.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,
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By  _____

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